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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

JOHN COOLEY

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Criminal No. 02-40 Erie
(21 U.S.C. §846)
(Under Seal)

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I N D I C T M E N T

The grand jury charges:

From in and around January 1992, to in and around December 2002, in the Western District of Pennsylvania, the defendant, John Cooley, did knowingly, intentionally and unlawfully conspire with others, both known and unknown to the grand jury, to possess with the intent to distribute and distribute fifty (50) grams or more of a mixture and substance containing a detectable amount of cocaine base, commonly known as "Crack", a Schedule II controlled substance, contrary to the provisions of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A)(iii).

In violation of Title 21, United States Code, Section 846.

Mary Beth Buchanan
MARY BETH BUCHANAN
United States Attorney
PA ID. No. 50254

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INDICTMENT MEMORANDUM

AND NOW comes the United States of America, by its attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Christian A. Trabold, Assistant United States Attorney for said District, and submits this Indictment Memorandum to the Court:

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I. THE INDICTMENT

A federal grand jury returned a one-count Indictment against the above-named defendant for an alleged violation of federal law:

| <u>COUNT</u> | <u>OFFENSE/DATE</u> | <u>TITLE/SECTION</u> |
|--------------|---|----------------------|
| 1 | Conspiracy to possess with intent to distribute and distribute fifty (50) grams or more of cocaine base, a Schedule II controlled substance In and around January 1992 to in and around December 2002 | 21 U.S.C. §846 |

II. ELEMENTS OF THE OFFENSE

A. As to Count One (21 U.S.C. §846):

In order for the crime of conspiracy to possess with the intent to distribute and distribute controlled substances to be established, the government must prove all of the following essential elements beyond a reasonable doubt:

1. That two or more persons came to a mutual understanding or agreement to try to accomplish a common and unlawful plan to distribute the controlled substances charged in the indictment.

United States v. Boyd, 595 F.2d 120 (3d Cir. 1978); United States v. Garcia, 655 F.2d 59, 62 (5th Cir. 1981); United States v. Allen, 613 F.2d 1248, 1253 (3d Cir. 1980).

2. That the defendant knowingly and willfully became a member of such conspiracy.

United States v. Adams, 759 F.2d 1099, 1114 (3d Cir.), cert. denied, 474 U.S. 906 (1985); United States v. Bodolato, 701 F.2d 915, 921-22 (11th Cir. 1983).

3. That cocaine base is a Schedule II controlled substance, pursuant to 21 U.S.C. § 812(c) Schedule II(a)(4).

4. That the conspiracy had the specific unlawful purpose of possessing with intent to distribute and distribute fifty (50) grams or more of cocaine base. Title 21, United States Code, Section 841(b)(1)(A)(iii).

Apprendi v. New Jersey, 120 S. Ct. 2348 (2000).

III. PENALTIES

A. As to Count One (21 U.S.C. §846):

1. A term of imprisonment of not less than ten (10) years, to a maximum of life;
2. A fine not to exceed \$4,000,000;
3. A term of supervised release of at least five (5) years;
4. For a second or subsequent narcotic drug controlled substance felony conviction that is final, whether federal, state or foreign, a term of imprisonment of not less than twenty (20) years, to a maximum of life, a fine not to exceed \$8,000,000, and a term of supervised release of at least ten (10) years.

IV. MANDATORY SPECIAL ASSESSMENT

A mandatory special assessment of \$100 must be imposed on each count in the indictment for which defendant is convicted, pursuant to 18 U.S.C. §3013, as the offense occurred after April 24, 1996.

V. RESTITUTION

Not applicable in this case.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney



CHRISTIAN A. TRABOLD
Assistant U.S. Attorney
PA I.D. No. 75013